

Express Plumbing and Plumbers & Pipefitters Local No. 4, a/w United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, AFL-CIO and Plumbers & Pipefitters Local No. 138, a/w United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, AFL-CIO. Cases 1-CA-30290 and 1-CA-30373

August 16, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and amended charge in Case 1-CA-30290 filed by Plumbers & Pipefitters Local No. 4, a/w United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, AFL-CIO (Local No. 4), the General Counsel of the National Labor Relations Board issued a complaint on April 22, 1993, against Express Plumbing (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge,¹ and complaint, the Respondent failed to file an answer.

Upon a charge and amended charge in Case 1-CA-30373 filed by Plumbers & Pipefitters Local No. 138, a/w United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, AFL-CIO (Local No. 138), the General Counsel of the National Labor Relations Board issued a complaint on May 17, 1993, against the Respondent alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

Cases 1-CA-30290 and 1-CA-30373 were consolidated by order of June 17, 1993. On June 30, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On July 2, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the

¹ The amended charge was served on the Respondent by certified mail, return receipt requested. Neither a return receipt or a returned copy of the charge were found by the Regional Office. Assuming that the Respondent did not claim the amended charge, it does not in any event defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 4, 1993, notified the Respondent that unless an answer was received June 11, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Worcester, Massachusetts, has been engaged as a mechanical contractor in the plumbing and heating industry. During the calendar year ending December 31, 1992, the Respondent purchased and received at its Worcester facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local Nos. 4 and 138 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A:

All plumbers and pipefitters employed by the Respondent within the jurisdiction of Local No. 4, excluding guards and supervisors as defined in the Act.

Unit B:

All plumbers and pipefitters employed by the Respondent within the jurisdiction of Local No. 138, excluding guards and supervisors as defined in the Act.

Massachusetts Association of Plumbing & Heating and Cooling Contractors and New England Mechanical Contractor's Association (the Associations) have been organizations composed of various employers engaged in the plumbing and heating contracting industry, one purpose of which is to represent their employer-members in negotiating and administering collective-bargaining agreements with Local No. 4. The Respondent

has been an employer-member of the Associations at all material times.

About August 31, 1992, the Associations and Local No. 4 entered into a collective-bargaining agreement which is effective by its terms for the period September 1, 1992, through August 31, 1994 (1992–1994 contract). Since about 1990, Local No. 4 has been the designated exclusive collective-bargaining representative of unit A and since that date Local No. 4 has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the 1992–1994 contract. At all times since 1990, based on Section 9(a) of the Act, Local No. 4 has been and is the exclusive collective-bargaining representative of unit A.

United Employers Association of Plumbing-Heating-Cooling Industry (United) has been an organization composed of various employers engaged in the plumbing and heating contracting industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with Local No. 138. United and Local No. 138 are parties to a collective-bargaining agreement which is effective for the period January 1, 1992 through August 31, 1993 (1992–1993 contract). Since on or about June 8, 1993, Local No. 138 has been the exclusive collective-bargaining representative of the employees of unit B and since that date Local No. 138 has been recognized as such representative by the Respondent. This recognition is embodied in the 1992–1993 contract adopted by the Respondent on June 8, 1992. At all times since June 8, 1992, based on Section 9(a) of the Act, Local No. 138 has been, and is, the exclusive collective-bargaining representative of the employees in unit B.

Since about September 15, 1992, and continuing through the present, the Respondent has failed to continue in effect all the terms and conditions of the 1992–1994 contract by failing to remit union dues and by failing to make payments to the health and welfare fund, pension fund, training fund and annuity fund as required by the 1992–1994 contract.

For the period September 1992 through October 31, 1992, the Respondent has failed to continue in effect all the terms and conditions of the 1992–1993 contract by failing to remit union dues and by failing to make payments to the health and welfare fund, pension fund, training fund, annuity fund, vacation fund, national pension fund, and industry fund (educational scholarships for children of unit B members).

These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct without the Union's consent.

CONCLUSION OF LAW

By failing to remit union dues and by failing to make fringe benefit fund payments pursuant to the 1992–1994 contract and the 1992–1993 contract, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required fringe benefit fund payments, we shall order the Respondent to make whole its employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remit to Local Nos. 4 and 138 the union dues that have not been remitted with interest to be computed in the manner set forth in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Express Plumbing, Worcester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing to remit union dues.

- (b) Failing to make payments to fringe benefit funds pursuant to the 1992–1993 contract and the 1992–1994 contract.

- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Remit to Local Nos. 4 and 138 the union dues with interest as described in the remedy section of this decision.

- (b) Remit all fringe benefit fund payments and make its employees whole for failure to make these pay-

ments, with interest as described in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Worcester, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to bargain in good faith with Plumbers & Pipefitters Local No. 4 or Local No. 138, a/w United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada, AFL-CIO as the exclusive collective-bargaining representative of all plumbers and pipefitters employed by us within each of the Local's jurisdictions, excluding guards and supervisors as defined in the Act.

WE WILL NOT fail to remit union dues.

WE WILL NOT fail to make fringe benefit fund payments as required by our collective bargaining agreements.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to Local Nos. 4 and 138, with interest, the dues that have not been remitted to them.

WE WILL make whole our employees, with interest, for any losses which they have sustained as a result of our failure to make fringe benefit payments and we will make all fringe benefits payments that we have not made pursuant to our contractual obligation.

EXPRESS PLUMBING